

## OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 02-05

July 19, 2002

**TO:** All Regional Directors, Officers-in-Charge and Resident Officers**FROM:** Arthur F. Rosenfeld, General Counsel**SUBJECT:** Collection Cases - Reaffirmation of GC 95-8

By Memorandum GC 88-4, dated March 14, 1988, "Cases Involving a Failure to Make Contributions Into a Pension Fund - *Laborers Health & Welfare Trust Fund v. Advance Lightweight Concrete Co.*, \_\_\_\_ U.S. \_\_\_\_ (Feb.23, 1988)," then-General Counsel Rosemary M. Collyer announced that henceforth Regions should defer to a pending ERISA lawsuit the processing of a Section 8(a)(5) - 8(d) unfair labor practice charge claiming a failure to make contractually required pension fund contributions during the contract term. Pursuant to *Laborers Health & Welfare Trust Fund v. Advance Lightweight Concrete Co.*, 484 U.S. 539 (1988), charges alleging post-contract expiration delinquencies would be processed. Charges filed alleging delinquencies during the contract term filed at a time when there was *not* a pending ERISA or Section 301 lawsuit were to be evaluated for traditional *Collyer* deferral.<sup>1</sup>

In Memorandum GC 95-8, dated June 5, 1995, then-General Counsel Fred Feinstein revisited and revised the deferral policy announced in Memorandum GC 88-4. Under Memorandum GC 95-8, Regions were instructed to defer Section 8(a)(5) collection cases where a delinquency is alleged to have arisen during the contract term and there is concurrent relief available under either ERISA or Section 301. Thus, a traditional Collyer deferral analysis was not required for deferral of a "collection" 8(a)(5) - 8(d) charge when there was no pending lawsuit. Rather, if there was arguable merit to the allegation of a failure to make contributions during the contract term, deferral was appropriate.

On several occasions since the issuance of Memorandum GC 95-8, Regions have issued complaint in "collection" 8(a)(5) cases in situations where deferral appears to have been appropriate under Memorandum GC 95-8.

I share the views of General Counsels Feinstein and Collyer, expressed in Memoranda GC 95-8 and 88-4 with regard to the processing by the Board of "collection" 8(a)(5) cases when the aggrieved party has access to the courts to seek vindication of its contract rights.

Accordingly, Regions should follow the seven point procedure for processing of Section 8(a)(5) "collection" cases contained in Memorandum GC 95-8.<sup>2</sup> Any questions concerning this matter should be directed to your Assistant General Counsel or Deputy.

/s/  
A.F.R.

cc:  
Release to Public

MEMORANDUM GC 02-05

<sup>1</sup> Memorandum GC 88-8, dated August 2, 1988, advised Regions that all charges alleging fund payment delinquencies and not just those involving pension funds would be subject to the provisions of GC 88-4.

<sup>2</sup> Where a Region believes that circumstances warrant the issuance of complaint in a "collection" case otherwise deferrable under this Memorandum, the Region should submit the matter to the Division of Advice.